notice to tax payers to receive complaints was given by the City of Arcadia.

The first part of this is merely procedure and could have been corrected and was corrected by acts of the Legislature as hereinafter set forth, and as to "reasonable or lawful" notice, this is merely a conclusion of the pleader and of course the Chancellor struck this part of the counter-claim.

(7) The Petitioner alleges that the assessment of the property as made revealed a **lack of uniformity** in valuation and a lack of equality in rate of taxation as compared with different portions of the property and of other property in the City of Arcadia.

"A lack of uniformity" of course did not deprive this Petitioner of her property without due process of law. This could have been corrected and was corrected by act of the Legislature as hereinafter set forth; and furthermore, if the valuation was defective, this part of the counter-claim should have set forth the true value of the property and should have tendered the correct amount of taxes to the court, which the Petitioner did not do, and of course that part of the counter-claim was stricken.

(8) This part of the counter-claim says that the delinquent taxes were not placed in the hands of an attorney for collection year by year, and that on several occasions assessment rolls were handled by the attorney en mass, by several individuals who purported to be acting as attorneys for the City of Arcadia in collecting taxes, and that the attorneys who are now acting, are acting under blanket orders covering several thousand delinquencies that extend for many years back, and out of these delinquencies only a small number of suits have been instituted and that these attorneys are not uniformly bringing suits.

This part of the counter-claim amounts to nothing. It is within the discretion of the City Council to bring suits to

foreclose delinquent taxes on any property it desires. It looks like the City has been very lenient in regard to the property of Petitioner in that no suit has been filed prior to this, and her taxes have been allowed to run for ten years without molestation. Of course, that part of the counter-claim should have been stricken.

(9) This seems to be a **development** to the effect that the property has remained in status quo from 1926 until the present time and that the assessments from 1926 to 1936 upon the said property for each year varied and that the valuation depends greatly on the "Florida Boom of 1925."

This part of the counter-claim sets up no defense and of course the court should have and did strike this part of the counter-claim.

(10) This part of the counter-claim seems to say that no personal property was assessed for the years 1926 to 1932 nor was any payment made on intangible property during that time; and that because there was no personal property assessment this reacted to the injury of the Petitioner.

This part of the counter-claim sets up no cause for relief. This allegation amounts to nothing. If it did constitute a defect in the assessment, such defects were cured by the acts of the Legislature as hereinafter set forth and this part of the counter-claim should have been stricken.

(11) This part of the counter-claim says that the City of Arcadia and the City Council did not have any **legally** executed records covering the subject matter of taxation.

"Legally" is a mere conclusion of the pleader and of course that should have been stricken.

OTHER TAXES PAID

The Petitioner says in this part of her answer that she has paid all of the County and State taxes on all of her property and that she would like to pay all the City taxes that are legal taxes, provided she is given ample time to pay those taxes.

This constitutes no defense. If there were any legal taxes, she should have tendered to the court the amount of those legal taxes, and this she did not do, and of course, the Chancellor struck this part of the answer.

The property involved in this suit is in the City of Arcadia. The City of Arcadia had authority to levy taxes for municipal purposes. Chapter 6323, Laws of Florida, Acts of 1911. All of the above so called defects, if any there were, were irregularities in the assessment of taxes for some of the years between 1926 and 1936, which irregularities were cured by special acts of the Legislature of 1933, Chapter 16309 and by Special Acts of the Legislature of 1939, Chapter 19683. All of these laws were enacted for the purpose of correcting such irregularities as are pointed out by the said counter-claim.

The counter-claim as found in the answer admitted that the property involved in the suit was situate in the City of Arcadia; that said property was subject to taxation, and was assessed, but was irregularly assessed. The Chancellor took judicial cognizance of the fact that the said irregularities as pointed out by the said counter-claim had been cured by the said Special Acts of the Legislature of the State of Florida, and dismissed the said counter-claim.

Furthermore, the counter-claim admitted that some of the taxes were regular, but the counter-claim failed and refused to offer to do equity by tendering to the court the amount of taxes which the petitioner admitted to be correct. Florida has held that to be a prerequisite to any relief. Order granting temporary injunction restraining collection

of excess taxes, conditioned on payment of legal taxes into court before becoming effective, was not such an improvident exercise of judicial discretion as to render the order erroneous under Compiled General Laws of Florida, 1927, 1038-1040. Louisville etc. R. Co. v. Amos 98 Fla. 350, 123 So. 745.

As our supreme court, speaking through Judge Buford, in its opinion in this cause said, in substance,—the Petitioner was in a chancery court and if she had any defense which was not cured, she should have set up that defense. The defense that she attempts to set up amounts to nothing but irregularities which were cured by the said Acts of the Legislature, and the defenses which the Petitioner had attempted to set up in her counter-claim were illegal and insufficient and the Chancellor properly struck the said answer.

WHEREFORE the City of Arcadia asks that the said petition for certiorari be denied.

All of which is respectfully submitted.

R. W. Shackleford

Sidney T. Sistrunk

Counsel for City of Arcadia,
a Municipal Corporation.